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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN LAMAR HOPKINS,

Defendant and Appellant.

A129115

**(Alameda County
Super. Ct. No. H-47164)**

Pursuant to a negotiated plea,¹ defendant Kevin Lamar Hopkins pled no contest to petty theft with petty theft priors (Pen. Code, §§ 484, subd. (a), 666)² and admitted serving five prior prison terms (§ 667.5, subd. (b)). His counsel has advised us that examination of the record reveals no arguable issues. (*Anders v. California* (1967) 386 U.S. 738 (*Anders*); *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Counsel informed defendant that a brief pursuant to *Wende* and *Anders* was being filed and that defendant had the right to personally file a supplemental brief in this case within 30 days. No supplemental brief has been filed. We affirm.

¹ The complaint alleged 16 prior convictions, including 14 prior prison terms, and alleged two prior robberies as prior strike offenses.

² All undesignated section references are to the Penal Code.

BACKGROUND³

On January 19, 2009, a sporting goods store security guard apprehended defendant after defendant left the store without paying for two pairs of shoes.

On July 7, 2009, defendant, represented by John Noonan, entered into the negotiated plea. It provided that defendant would be granted five years' probation including a nine-month jail term. The plea also included a "*Cruz* waiver" (*People v. Cruz* (1988) 44 Cal.3d 1247, 1254, fn. 5), conditioning the promised sentence on defendant's compliance with all laws and his appearance at sentencing.

Defendant failed to appear for sentencing on September 4 and 9, 2009, and a bench warrant issued. In November, while in jail, defendant filed a motion in propria persona seeking transcripts of his plea hearing, asserting he wished to withdraw his plea.

On April 16, 2010, the public defender's office declared a conflict and Noonan was reappointed.

On April 27, 2010, defendant appeared and indicated he wanted to withdraw his plea. The court granted defendant's request for pro per status and directed him to prepare a declaration stating the basis for wanting to withdraw his plea. The next day, defendant submitted his declaration stating his plea was made under physical and mental duress, including being depressed after his psychotropic medication was withdrawn and having chronic back pain. He also stated that his former appointed counsel (Noonan) had withdrawn from the case in September 2009 and was reluctant to accept the reappointment.

On May 11, 2010, the court appointed Patrick O'Rourke to assist defendant with his plea withdrawal request.

On May 21, 2010, O'Rourke informed the court (Judge Murphy) that defendant was in custody at the time of the September 2009 sentencing, constituting a *Cruz* waiver. The court stated that it would not put defendant on probation but instead would continue

³ The background facts are taken from the probation report.

the matter for 34 days “at which time he will have a paper commitment on 16 months” (since his custody credits exceeded that term).

At the June 25, 2010 sentencing hearing, O’Rourke stated that defendant had decided not to pursue withdrawal of his plea. The court (Judge Kingsbury) noted that the plea agreement provided for five years’ probation and credit for time served. It stated, “Apparently there was something that activated the *Cruz* waiver, some violation of a *Cruz* waiver in this case. And Judge Murphy indicated to [defendant] that if the matter were submitted at this point, he would sentence him to State prison for 16 months with all this back time, which would entitle him to his release today. But he would be required to serve a period of parole. . . .” Defendant stated he was in agreement.

Thereafter, the court sentenced defendant to the 16 months lower term to run concurrent with any term he was obligated to serve. The court found he had 245 days of actual credit and 245 days of conduct credit and therefore was entitled to release with service on parole. The court struck the four prior prison term allegations for sentencing purposes. It imposed a \$200 restitution fine (§ 1202.4, subd. (b)(1)), a \$200 parole revocation fine suspended pending his successful completion of parole (§ 1202.45), a \$30 court security fee (§ 1465.8), and a \$30 criminal conviction assessment fee (Gov. Code, § 70373). It also required defendant to submit to DNA testing (§ 296).

Subsequently, the trial court denied defendant’s application for a certificate of probable cause.

Defendant was adequately represented at all stages of the proceedings. No arguable issue is shown.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.